

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

IN RE: OHIO EXECUTION
PROTOCOL LITIGATION

: Case No. 2:11-cv-1016

Chief Judge Edmund A. Sargus, Jr.
: Magistrate Judge Michael R. Merz

This document relates to:
Plaintiffs Cleveland Jackson

:

DECISION AND ORDER UPHOLDING PRIVILEGE OBJECTION

During the course of the deposition of Plaintiff Cleveland Jackson, Defendants' counsel asked a question about Plaintiff's knowledge of the drugs involved in the current execution protocol (01-COM-11, rev. 10/07/2016). Plaintiff's counsel objected on the basis of attorney-client communication privilege and instructed the witness not to answer. During colloquy on the objection, Defendants' counsel claimed the privilege had been waived by Cleveland Jackson's Affidavit of February 5, 2019, filed in Franklin County Common Pleas Case No. 18-cv-758. Defendants' counsel furnished the Court with a copy of the Affidavit which is attached.

Defendants rely on *In re Grand Jury Proceedings [for] October 12, 1995*, 78 F.3d 251 (6th Cir. 1996)¹, for the proposition that revelation by a client of part of an attorney-client communication waives the privilege for the subject matter of that conversation. In her opinion Judge Kennedy distinguishes between a narrow and broad definition of the scope of the waiver.

¹ During the conference call, the Magistrate Judge incorrectly stated that he regularly relied on this case in concluding privilege was waived in

Having reviewed Plaintiff Jackson's affidavit as the Sixth Circuit reviewed the testimony of the government investigators in that case, the Court concludes Jackson did not waive the privilege as to any matters related to the instant litigation.

The privilege objection is SUSTAINED.

August 28, 2019.

s/ *Michael R. Merz*
United States Magistrate Judge

IN THE COURT OF COMMON PLEAS
FOR FRANKLIN COUNTY, OHIO
CIVIL DIVISION

JAMES DERRICK O'NEAL, et. al. :
Plaintiffs : Case No. 18CV-758
vs. : JUDGE Mark A. Serrot
THE STATE OF OHIO, et al. :
Defendants

Affidavit of Cleveland Jackson

In the County of Ross,
In the State of Ohio ss:

Cleveland Jackson, after being duly sworn according to law states as follows:

1. I am one of the parties in this case.
2. I dropped out of school in the tenth grade. I did not get a GED.
3. In February 2007, the federal court appointed Attorneys John Gibbons and Jim Jenkins to be my attorneys in my federal case.
4. Since Attorney Jenkins became my attorney in 2007, he only met with me once.
5. Since Attorney Gibbons became my attorney in 2007, as best I can remember, he visited me only four or five times. He has not visited with me since death row got moved to Chillicothe.

6. I have not heard anything from either attorney in about the last
CW ~~three~~ ^{three} years.

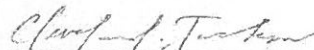
7. Attorney Gibbons did not ask me if I wanted to be in the lethal
injection law case in federal court. He did not tell me I was in the case. He never
told me anything about this case.

8. I did not know anything about the lethal injection case until 2018.
Attorney Porter said that he needed me to sign some papers so Attorney Gibbons
could get some records about me. Attorney Porter said that he was doing this for
Attorney Gibbons.

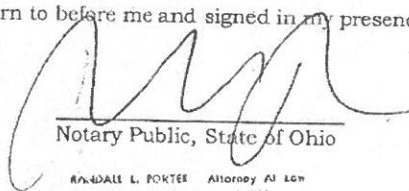
9. I never heard from Attorney Gibbons if he got the records or what he
did with the records.

10. Until last year I did not really know what the lethal injection law suit
was all about. I believed that it had something to do with them putting the needle
in your arm when you got to Lucasville

Further affiant sayeth naught.


Cleveland Jackson

The foregoing affidavit was sworn to before me and signed in my presence
this the 5th day of February, 2019.


Notary Public, State of Ohio

RANDALL L. PORTER Attorney At Law
Notary Public, State of Ohio
MY COMMISSION IS NON-EXPIRING